

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his )  
capacity as ATTORNEY GENERAL )  
OF THE STATE OF OKLAHOMA and )  
OKLAHOMA SECRETARY OF THE )  
ENVIRONMENT C. MILES TOLBERT, )  
in his capacity as the )  
TRUSTEE FOR NATURAL RESOURCES )  
FOR THE STATE OF OKLAHOMA, )

Plaintiff, )

vs. )

TYSON FOODS, INC., et al, )

Defendants. )

4:05-CV-00329-TCK-SAJ

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THE VIDEOTAPED DEPOSITION OF  
SCOTT THOMPSON, produced as a witness on behalf of  
the Defendants in the above styled and numbered  
cause, taken on the 4th day of January, 2008, in the  
City of Oklahoma City, County of Oklahoma, State of  
Oklahoma, before me, Lisa A. Steinmeyer, a Certified  
Shorthand Reporter, duly certified under and by  
virtue of the laws of the State of Oklahoma.

**TULSA FREELANCE REPORTERS**  
**918-587-2878**

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1 enforcement within the bounds of the department's  
2 statutory jurisdiction?

3 A Sure.

4 Q Inspection is one of your responsibilities in  
5 your department?

10:25AM

6 A Uh-huh.

7 Q That's correct; right?

8 A Yes.

9 Q Monitoring and enforcement are also within  
10 your department's jurisdiction, aren't they?

10:25AM

11 A Yes, for certain programs.

12 Q We downloaded something from the ODEQ website  
13 and we did it in December because this page  
14 apparently was last modified on December 12th of  
15 2007. This is the land protection division, solid  
16 waste management division, and it appears that this  
17 document is describing the function or goal of the  
18 division of which you are head. Would you look at  
19 that and see if that's correct?

10:26AM

20 A Yeah, that looks like part of our website.

10:26AM

21 Q I'm going to make what you just looked at  
22 Thompson Exhibit 1. This indicates that your  
23 department investigates complaints; is that correct?

24 A Yes.

25 Q And controls non-hazardous industrial waste

10:27AM

1 disposal?

2 A Yes.

3 Q Title 27A, is that the Oklahoma statute that  
4 controls the environment and natural resources?

5 A I believe so. 10:28AM

6 Q I don't want to cut you short, so let's look  
7 at a copy of it. Is that the right number?

8 A I think so, but I rely on other people to get  
9 citations right.

10 Q I understand. That's why you have the lawyer 10:28AM  
11 at your right hand, isn't it?

12 A Yep.

13 Q That's what he's there for. Two lawyers  
14 actually today. One of the things that's included  
15 in this statute has to do with -- includes a section 10:28AM  
16 which has several definitions; is that correct?

17 A I'm sure it does.

18 Q And would it be correct to say that one of  
19 those definitions is a definition for solid waste?

20 A Yes. 10:29AM

21 Q Has your department ever defined poultry  
22 litter to be solid waste?

23 A I don't know if we've ever made an official  
24 determination, but if somebody wanted to throw it  
25 away, to dispose of it, then I think it would be 10:29AM

1 solid waste.

2 Q Have you ever considered poultry litter to be  
3 solid waste, your department?

4 A I haven't tried to think about it too much. I  
5 haven't had that issue come up directly. 10:29AM

6 Q Would it be correct to say that up to this  
7 point that your division has not considered poultry  
8 litter to be solid waste?

9 A I would say that so far --

10 MR. LENNINGTON: I object to the form. I'm 10:29AM  
11 not sure what department considered means. Go ahead  
12 and answer, if you know.

13 A Ask that question again.

14 Q Let me rephrase it and see if I can make  
15 everybody happy. Has the land protection division, 10:30AM  
16 either under that name or its previous name, ever  
17 treated poultry litter as solid waste?

18 MR. LENNINGTON: Objection to form. Go  
19 ahead and answer.

20 A I don't recall ever having taken action 10:30AM  
21 involving poultry litter as a waste.

22 Q Do you recall ever having identified poultry  
23 litter as a solid waste?

24 MR. LENNINGTON: Objection to form. Go  
25 ahead and answer. 10:30AM

1 Q You being the department; you are speaking for  
2 the department.

3 A Have we specifically identified it as a solid  
4 waste in an actual case? No, not that I recall.

5 Q Is agricultural waste in general something 10:30AM  
6 that's handled by your department or is it handled  
7 by another state agency?

8 A I would say in general, no.

9 Q In general, no, it is not handled by your land  
10 protection division? 10:30AM

11 A Right.

12 Q Normally it is handled by what department?

13 A Agriculture department.

14 Q The Oklahoma Department of Agriculture?

15 A Right, or now it's something else, food and 10:31AM  
16 agriculture.

17 Q ODAFF?

18 A Yeah.

19 Q You call it ODAFF now. You say generally. In  
20 what respects would that word generally mean that 10:31AM  
21 the land protection division of ODEQ would be  
22 involved with agricultural waste?

23 A Well, if somebody -- if somebody wanted to  
24 dispose of a bunch of material and came to us to  
25 dispose of it, then it would be -- have to be 10:31AM



1 treated as a solid waste or a hazardous waste. If  
2 we got a complaint that someone was digging a hole  
3 and burying something and we went and found out that  
4 it had an agricultural source, we might check with  
5 the Ag Department to see if it was something that  
6 they'd permitted and if not, then we might take  
7 enforcement action.

10:31AM

8 Q Have either of those things ever happened?

9 A Not that I recall.

10 Q And how long have you been in charge of your  
11 department?

10:31AM

12 A About three years probably, four.

13 Q And how long have you been in this department?

14 A When you say department, I'm assuming you mean  
15 division.

10:32AM

16 Q Yes, division.

17 A I'm not running the agency.

18 Q I keep saying department. I mean division. I  
19 didn't mean to promote you just quite yet.

20 A Okay, and what was the last question?

10:32AM

21 Q How long have you been in this division?

22 A Since '93 when the agency was formed.

23 Q So since 1993 to the present time?

24 A I was functioning in this division in the  
25 '80's, since '84 for the Health Department before

10:32AM

1 the DEQ was formed, so --

2 Q Taking you back from '84 to the present time,  
3 have you ever known this division to be involved in  
4 either of those two ways you indicated that this  
5 division might be involved at some future time?

10:32AM

6 A We've responded to legal disposal stuff.  
7 Whether there's ever been any agricultural stuff, I  
8 don't recall for sure. Some of that might have been  
9 handled by other folks in the division, but I don't  
10 recall a specific incident.

10:33AM

11 Q Or a specific instance involving agriculture?

12 A Not for waste. We did work with the  
13 Department of Agriculture regarding pesticides that  
14 could still be applied in the manner they were meant  
15 to be applied. I did work with Ag on some  
16 investigations of pesticide applicators as well.

10:33AM

17 Q Does your division have the ability to act if  
18 it determines that there is something in the  
19 environment that's causing a danger to human health  
20 or the environment?

10:33AM

21 A Yes.

22 Q Would it be correct to say that in fact your  
23 division has a duty to act if you perceive a  
24 problem?

25 A Yes, depending on the degree of the problem.

10:34AM

1 Q And if you saw a problem that you did not see  
2 was sufficiently a threat to require any immediate,  
3 for example, legal action, would you have let that  
4 problem alone or would you have taken some other  
5 lesser action?

10:34AM

6 MR. LENNINGTON: Objection to form.

7 A I don't quite understand what you're asking  
8 me.

9 Q Well, you agree that if you found something  
10 that was -- that you had the ability to act and the  
11 duty to act if you determined that there was  
12 something in the environment that was causing a  
13 danger to human health and the environment, but you  
14 indicated that there might be a matter that you  
15 found that was not sufficiently a danger to require  
16 that kind of action. If you found that kind of a  
17 danger or a risk, would it not still be your  
18 responsibility to take some action?

10:34AM

10:34AM

19 MR. LENNINGTON: Objection to form.

20 Q Whether it be investigation or some other  
21 matter, remedy?

10:35AM

22 A I think that would all be decided on a  
23 case-by-case basis and the exact situation and  
24 scenario and potential risks and et cetera.

25 Q Have there been times since you have been with

10:35AM

1 the division when the division saw a problem that  
2 was a danger to human health or the environment and  
3 you did nothing?

4 A Not that I recall.

5 Q I would think as long as you have been with 10:35AM  
6 the agency, the agency must be fairly satisfied with  
7 the way you do your job.

8 A (Witness nods head up and down).

9 Q Have you ever referred a matter pertaining to  
10 agriculture to any other agency other than the 10:36AM  
11 Department of Agriculture?

12 A Not that I recall.

13 Q Have you ever investigated, and you, I'm  
14 referring again to what's now the land protection  
15 division. 10:36AM

16 A Let me back up a minute. There have been some  
17 like the pesticide applicator sites and pesticide  
18 spills and things like that that we may have worked  
19 with the EPA on as well.

20 Q Anything else with respect to agriculture? 10:36AM

21 A Not that comes to mind.

22 Q Has your division ever conducted any  
23 investigation of anything with regard to poultry  
24 litter or what may be referred to as poultry waste?

25 A Not that I'm aware of. We may have looked at 10:36AM

10:58AM

10:58AM

10:58AM

10:59AM

10:59AM

1 Q And is that the only complaint that you recall  
2 receiving with regard to bacteria in your division?

3 A Yes.

4 Q Would you agree that the ODEQ has never  
5 regulated poultry litter as solid waste? 11:24AM

6 A I don't know.

7 Q To your knowledge has the ODEQ ever regulated  
8 poultry litter as solid waste?

9 A I don't know. I mean I don't -- I haven't  
10 dealt with a case involving poultry litter directly 11:24AM  
11 as solid waste.

12 Q To your knowledge has the Oklahoma Department  
13 of Environmental Quality ever dealt with poultry  
14 litter as solid waste?

15 A Don't know. 11:24AM

16 Q Well, I know that you don't know, but do you  
17 know of any time when they have?

18 A No.

19 Q Okay. Did the EPA, Environmental Protection  
20 Agency, delegate enforcement of solid waste issues 11:25AM  
21 to states?

22 A No.

23 Q What was delegated to the states?

24 A Well, it's the states -- EPA has not taken --  
25 the EPA does not actually regulate municipal solid 11:25AM

1 question? I'm not sure I could ask it twice.

2 (Whereupon, the court reporter read  
3 back the previous question.)

4 A We would probably refer it to somebody else,  
5 to the Ag Department. 11:27AM

6 Q Has your division ever made any determination  
7 that poultry litter is an imminent threat to the  
8 environment?

9 A I don't think so.

10 Q Do you know whether the Oklahoma Department of 11:27AM  
11 Environmental Quality has ever made such a  
12 declaration?

13 A Not that I know of.

14 Q You told us earlier that the only way you  
15 would be involved with poultry litter, would have 11:28AM  
16 been involved would be if someone called and said  
17 that somebody is digging a hole and trying to  
18 dispose of a whole lot of it in the hole; do you  
19 recall that?

20 A Or if somebody wanted -- called us about legal 11:28AM  
21 disposal, we would allow them to dispose of it in a  
22 landfill. That could have occurred. I don't have a  
23 clue.

24 Q You told me earlier that you had worked with a  
25 professor at the university of -- Oklahoma State 11:28AM

1       **A**       No.

2       **Q**       You would agree with me, would you not, that  
3       ODEQ generally in the land protection division  
4       specifically has authority to, and indeed a duty, to  
5       investigate violations of RCRA in the Illinois River       11:50AM  
6       watershed; is that correct?

7               MR. LENNINGTON: Objection, form.

8       **A**       Anywhere in Oklahoma.

9       **Q**       Right. It's DEQ's responsibility and duty to  
10      investigate violations of RCRA in the state of       11:51AM  
11      Oklahoma?

12      **A**       Yes.

13      **Q**       Okay. Does any other agency in the state of  
14      Oklahoma have authority under RCRA to investigate  
15      violations of RCRA in the state of Oklahoma?       11:51AM

16              MR. LENNINGTON: Objection, foundation.

17      **A**       I don't think so.

18      **Q**       And I'm saying other than EPA.

19      **A**       Any other state agency?

20      **Q**       Yes, sir.       11:51AM

21      **A**       I don't think so, no.

22      **Q**       So the Department of Mines doesn't have RCRA  
23      jurisdiction --

24      **A**       No, not as far as I know.

25      **Q**       -- as an example?       11:51AM



1       **A**       I don't read their rules.

2       **Q**       Okay. So far as you're concerned and so far  
3 as you know, DEQ is the only state agency that has  
4 RCRA authority in the state of Oklahoma?

5               MR. LENNINGTON: Objection, form. 11:51AM

6       **A**       Yes.

7       **Q**       Under DEQ's RCRA authority, the department has  
8 the ability or the authority to order businesses or  
9 operations to cease engaging in certain activities;  
10 is that correct? 11:52AM

11       **A**       You said under RCRA authority?

12       **Q**       Under RCRA?

13       **A**       Yes.

14       **Q**       To your knowledge has DEQ ever ordered any  
15 operation or business in the state of Oklahoma to 11:53AM  
16 cease or desist from the land application of poultry  
17 litter?

18       **A**       No.

19       **Q**       What would be the implications of the land  
20 application of poultry litter being regulated under 11:53AM  
21 RCRA; in other words, if poultry litter were deemed  
22 to be something that was regulated by RCRA, and I  
23 think that it's not, but that's an issue, what would  
24 be the implications of that?

25       **A**       I don't know. I would just wait on the case 11:53AM

1       **A**       Yes.

2       **Q**       Do you know whether poultry litter is used as  
3       a substitute for commercial fertilizer?

4       **A**       I believe that it is.

5       **Q**       Is it an effective substitute for commercial                   12:56PM  
6       fertilizer?

7       **A**       I don't know.

8       **Q**       Have you seen northeast Oklahoma?

9       **A**       Yes.

10      **Q**       Is it pretty green?   12:56PM

11      **A**       Most of the time.

12      **Q**       You're 47 years old. Were you over there when  
13      you were a teenager?

14      **A**       I think so.

15      **Q**       Do you remember it being quite as green then                   12:56PM  
16      or was it a lot more rocks and a lot fewer cows?

17      **A**       I don't know.

18      **Q**       Well, I don't think there's any argument, is  
19      there, that poultry litter is used as a substitute  
20      for commercial fertilizer?   12:56PM

21      **A**       I wouldn't argue with it, no.

22      **Q**       So under that definition, wouldn't that --  
23      wouldn't the use of poultry litter as a substitute  
24      for commercial fertilizer clearly fall within your  
25      definition of beneficial reuse?   12:56PM